

2. COMMISSION FOR CONFLICT OF INTEREST

"The Law does not include a restriction for the President and other members of the Commission for Conflict of Interest with regard to their membership in political parties or elected bodies, such as the municipal assembly. GRECO evaluation team recommends to determine ways to reduce a possible political influence on the decisions made by the Commission for Determining Conflict of Interest."

GRECO report on evaluation of anti-corruption measures and activities in Montenegro

Short CVs, publicly declared assets and income of the members of the Commission



Slobodan Leković,
Commission
President

Qualifications: Faculty of Economics in Podgorica, 1971

Work experience:

- Member of the temporary management body in the specialized work organization «Protection» Podgorica) 1977 – 1978)
- Senior advisor, Republican Committee for Tourism (1980 – 1984)
- Senior advisor, Republican Secretariat for Economy (1984 – 1991)
- Secretary of the Tourist Association of Montenegro (1991 – 1994)
- Assistant to the Minister of Tourism (1994 – 2004)
- Deputy in the Municipal Assembly Podgorica (1969 – 1974)
- Deputy in the Municipal Assembly (2003 – 2007)

Immovables: flat, Podgorica 75 m²; house, village Godinje, Virpazar 256 m²; land, village Godinje, Virpazar 19.502 m²

Movables: Jugo 45, year 1982

Monthly salary: 804 Euros

Other annual revenues:

Wine-growing - 2000 Euros, fruit and vegetable growing - 1000 Euros, book publishing - 1000 Euros, member of the Commission of the Pension Fund - 1500 Euros

Other household members:

do not have revenues or property



Slobodan Dragović,
Commission
member

Qualifications: Law Faculty in Sarajevo,

Work experience:

- trainee, and then an advisor in the Legal Department of the company "Industrijaimport" (1973 – 1977)
- employed in the Service of the Parliament of Montenegro as: advisor for political system; advisor to the Parliament Secretary; Secretary of the Commission for Constitutional Issues, Secretary of the Commission for Control of the Work of the State Security Service
- Assistant to the Secretary General of the Parliament (1991 – 1999)
- Deputy of the Secretary General of the Parliament (1999 – present)
- Secretary of the Republican Electoral Commission (2003 – present)

Immovables: Flat, Podgorica, 87 m², Land, Danilovgrad, Martinići, 4000m²

Movables: Opel, year 1989

Monthly pay: 625 Euros

Other revenues per year:

revenue from the Republican Electoral Commission 4000 Euros,

Other household members:

Wife: pension 100 Euros per month; Son: Audi 4, 1997 year, monthly salary 150 Euros; Daughter: Fiat Uno, year 1988, monthly salary 150 Euros



Ivo Đoković,
Commission
member

Qualifications: Law Faculty in Podgorica, 1982

Work experience:

-trainee, and then Head of the Service for General and Legal Affairs in Agrokombinat "13 jul" (1986 – 1993)
-Secretary of the Faculty of Economics and the Head of the Administration of Faculty of Economics (1993 – present)

Immovables: Flat 30 m2, Budva; flat 66 m2, Podgorica; land 49 acres and support building 17 M2, Župa, village Jugovići

Movables: Skoda Oktavija, 1999 year and Lada Samara year 1990

Monthly pay: 370 Euros at the faculty + 200 Euros in the Commission

Other revenues per year: Intellectual services 1 800 Euros

Other household members: wife: monthly salary 390 Euros



Željka Vuksanović,
Commission
member

Qualifications: Law Faculty in Podgorica, 1982

Work experience:

-Local government of Municipality Kolašin – property-legal affairs, work inspection, general administration, and social activities (1982 – present)
-Deputy in Municipal Assembly Kolašin (present)

Immovables: flat - 67 m2 (1/2), Kolašin

Movables: none

Monthly pay: 393 Euros + 200 Euros in Commission + deputy compensation 100 Euros

Other revenues: none

Other household members: Husband: house 140 m2 (1/2), Trebaljevo, Kolašin; land 7 Ha (1/4), Trebaljevo; flat, 67 m2 (1/2), Kolašin, car Jugo, year 1989. Son: land 1 000 m2, Jezerca, Kolašin



Tahir Gjonbalaj,
Commission
member

Qualifications: Faculty of Civil Engineering in Priština, 1990

Work experience:

-Secretary for land development, property legal relations and protection in Municipality Plav

Immovables: Flat 50 m2, Vuhtaj, Vusanje, flat 325 m2 (1/2), Gusinje

Movables: Golf, year 1983

Monthly pay: 340 Euros + 200 Euros in the Commission

Other revenues: Private supervision of works and execution of works, 450 Euros per month, agriculture 3000 Euros per year, construction 4500 Euros per year

Other household members: Wife: revenues from agriculture 2000 Euros per year, national costume 3500 Euros per year

During the period from 2005 to 2007, MANS in its role as a watchdog to the work of the Commission for Conflict of Interest, collected data and lodged 136 appeals against public officials. Through this process MANS was able to monitor performance and shortcomings in the Commission's work.

This section commences with data on previous work experience, official reports on property and income submitted by the members of the Commission.

It is followed by description of authorities of the Commission, procedure for submitting initiatives for conflict of interest and statistical data.

The final part of this section consist of a case study describing the conflict faced by the president of the Commission, Slobodan Leković, who was at that time member of the local parliament of Podgorica municipality, in determining a resolution related to Miomir Mugoša, Mayor of Podgorica and president of the local parliament, who happened to be from the same party. The case study also highlights the absurd situation that legal procedure for appealing decision of the Commission, even in relation to one of its own members is to resubmit an appeal to the Commission itself, thus putting it in the unenviable position of being its own supervisor.

Last case study is presenting Administrative and Supreme Court decisions on the right to appeal decisions of the Commission.

2.1. Establishment the Commission for Conflict of Interest and its Legal Authority

The Montenegrin Commission for Conflict of Interest has a President and four members elected by the Parliament for a period of five years, with the possibility of re-election.

According to the Law, the President and the members of the Commission are persons who have proved they are impartial and conscientious by their professional, work and moral qualities, and at least one member must have a BA in Law and have passed the state exam. The Commission President and members receive compensation, the amount of which is determined by the National Parliament.¹

The Law on Conflict of Interest gives to the Commission the following authority

1. to determine facts and circumstances necessary for making a decision whether a public official has violated the Law on Conflict of Interest;
2. to make an informed decision on the existence or non-existence of conflict of interest;
3. to determine the value of presents;
4. to keep Records of reports on revenues and property;
5. to adopt the Rules of Procedure;
6. to perform other jobs, in accordance with this law, such as
 - upon a request of an official who suspects to be in a situation which implies a conflict of interest, the Commission shall give an opinion
 - assess whether a public official has been influenced or has been subject to an unlawful action, upon a request of a public official
 - inform the State Prosecutor of the Republic of Montenegro in case a public official has not reported the revenues and property he obtained during his mandate
 - assess whether a public official can perform some other job as well, i.e. whether this causes conflict of interest²

¹ Article 18 of the Law on Conflict of Interest

² Article 6, 7, 11, 14 and 19 of the Law on Conflict of interest

The Law on Conflict of Interest came into force on June 30th 2004. On July 29th 2004 the Parliament made a Decision on Establishment of the Commission for Determining of Conflict of Interest and the election of the President and the Commission members.

The Commission started work on August 30th 2004, and only on February 1st 2005 work space was provided so seven months after the Law come into force it began to process reports on revenues and property of public officials and to make decisions on reports and initiatives.

The Law on Conflict of Interest prescribes that the initiatives for determining conflict of interest are submitted to the Commission for Conflict of Interest.

Ironically, the Rules of Procedure of the Commission, developed and adopted by the Commission itself, state that in a case where a party is not satisfied with the decision of the Commission, they may submit a request for reexamination of the Commissions' decision to the Commission itself.

The decision of the Commission upon this reexamination, according to the Commissions' rules, can only be challenged at the Administrative Court³.

2.2. Statistical data on the work of the Commission following the initiatives of MANS

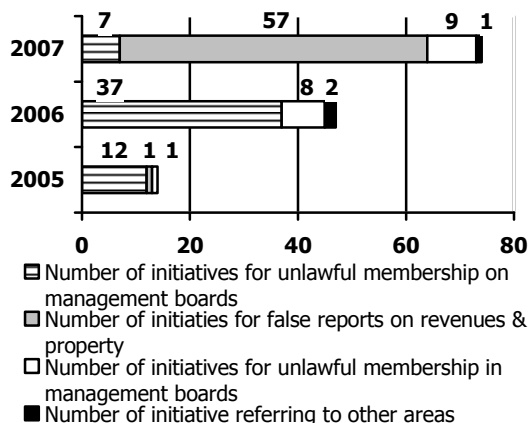
During the period from 2005 to 2007, MANS in its role as a watchdog to the work of the Commission for Conflict of Interest, collected data, lodged appeals to monitor performance and shortcomings in the Commission's work. MANS submitted over 95 % of the total number of submitted initiatives for determining conflict of interest. In 2005 and 2006 only MANS submitted initiatives, while in 2007 4 additional initiatives were submitted by other legal and physical persons. Statistical data given in this section refer only to decision of the Commission in relation to MANS initiatives.

2.2.1. Types of initiatives submitted

From the beginning of work of the Commission for Conflict of Interest until the end of 2007, MANS submitted 136 initiatives for determining conflict of interest of which 41% referred to unlawful membership of public officials in management boards of companies, 43% to false reports on property and revenues, 14% to performance of incompatible functions, and 2% to other areas.

Year	Initiatives for unlawful membership on management boards		Initiatives for false reports of revenues and property		Initiatives for performance of incompatible functions		Initiatives referring to other areas		Total number of initiatives submitted
	no	%	no	%	no	%	no	%	
2005	12	86%	1	7%	1	7%	0	0%	14
2006	37	77%	0	0%	9	19%	2	4%	48
2007	7	9%	57	77%	9	13%	1	1%	74
Total	56	41%	58	43%	19	14%	3	2%	136

³ Rules on the procedure before the Commission for establishment of Conflict of Interests, Article 32. Further information can be found in second case study provided in this section.



During 2005 MANS submitted to the Commission 14 initiatives for determining conflict of interest of which 86% referred to unlawful membership of public officials in management boards of companies, 7% referred to false reports of income and property and 7% to performance of several incompatible functions.

In 2006 a total of 48 initiatives were submitted, and somewhat smaller percentage than the previous year referred to unlawful membership of public officials in the management boards of companies (77% of the total number of submitted initiatives), 19% referred to performance of several incompatible functions, 4% to other areas, and none of the initiatives was submitted for false report of revenues and property.

During 2007 the structure of submitted initiatives changes and owing to the adoption of the Law on Free Access to Information and publishing of the data on ownership of property at the website of the Direction for Real Estate, most initiatives for determining conflict of interest (77%) refer to false reporting of revenues and property. Since owing to our reports most public officials left the management boards of companies, only 9% of initiatives submitted in 2007 referred to that form of law violation, 13% referred to unlawful performance of several public functions and 1% referred to other forms of law violation.

2.2.2. Decision of the Commission for Conflict of Interest

In the period from 2005 to 2007, the Commission determined for 71% of submitted initiatives that public officials did not violate the Law, and only in 15% of cases that they violated the Law, and for 14% of submitted initiatives the Commission has not yet made the decisions.

Year	Did not violate the law		Violate the law		Decision has not been made		Total
	No	%	No	%	No	%	
2005	14	100%	0	0%	-	0%	14
2006	37	77%	11	23%	-	0%	48
2007	46	62%	10	13%	18	25%	74
Total	97	71%	21	15%	18	14%	136

In 2005 the Commission determined there was no violation of law for all the submitted initiatives, and the same decision was made for 77% of initiatives submitted in 2006 and 62% if initiatives submitted in 2007.

2.2.3. Decisions of the Commission upon request for reexamination of the Commissions' decisions

A complaint can be lodged against the decision of the Commission for Conflict of Interest to the Commission itself. From the beginning of 2005 till the end of 2007, MANS submitted 44 requests for reconsidering the decisions of the Commission and in the second instance procedure the Commission made decisions on 23 requests for reconsidering and did not annul any of its first instance decisions.

Year	Number of confirmed decisions	Number of annulled decisions	Decisions that were not made	Number of requests for reconsideration
2005	3	0	-	3
2006	7	0	-	7
2007	13	0	21	34
Total	23	0	21	44

2.2.4. Notifications to the State Prosecutor

According to the Law, the Commission is obliged to inform the State Prosecutor on unlawful acquisition of revenues and property. Since its constituting the Commission has forwarded a total of 5 notifications to the State Prosecutor of which 4 are based on the decisions which the Commission made following the initiatives of MANS.

All the notifications were submitted because of unlawful acquisition of revenues based on membership in the management boards of companies, one refers to a republic officials, and 4 to local officials.

The Prosecutor did not react to the forwarded notifications.

2.3. Case study 1: Conflict of Interest of the members of the Commission

One of the key challenges faced by the Commission is that they are given the authority and responsibility to make decisions on conflict of interest related to members of their own political parties, and in some cases their employers or supervisors. This case study describes the conflict faced by the president of the Commission, who was at that time member of the local parliament of Podgorica municipality, in determining a resolution related to the Mayor of Podgorica and president of the local parliament, who happened to be from the same party.

On the first day of work of the Commission, on February 1st 2005, MANS submitted two initiatives for determining conflict of interest regarding the President of the Municipal Assembly of Podgorica Miomir Mugoša and the President of the Commission for Determining Conflict of Interest, Slobodan Leković.

The first initiative against Miomir Mugoša was submitted based on Article 15, paragraph 1 of the Law on Conflict of Interest, which prescribes that a public official cannot be a member of a company body, except for the shareholders assembly. The initiative stated that Miomir Mugoša was the President of the Municipal Assembly of Municipality Podgorica and a MP of the Democratic Party of Socialists, and that at the same time he was also a member of the Board of Directors of the Clinical Hospital Centre, of Hemomont and ICN Galenika, President of the Board of Directors of "Tennis club AS" and the President of the shareholders assembly of "Podgorička banka" AD.

The second, and linked, initiative was submitted against Slobodan Leković, President of the Commission for Determining Conflict of Interest which stated that Leković was in a position of conflict of interest in case of consideration of the initiative for Miomir Mugoša. It was stated that Leković was a member of the local parliament of Municipality Podgorica and a member of the Democratic Party of Socialists, while Mayor Mugoša was the President of the Municipal Assembly and a member of the same party. It was argued that for this reason Mr. Leković would not be in a position to make an objective decision in his position of the President of the Commission for Determining Conflict of Interest.

On the following day Mayor Mugoša reacted publicly to MANS appeal confirming his membership in management board of "Hemomont" and the presidency of the assembly of shareholders of "Podgorička banka". According to the Law on Conflict of Interest, public officers are not restricted from being presidents (or members) of assemblies of private companies, even though these bodies elect boards of directors. In relation to the other three companies⁴, the Mayor explained that he had either resigned or his mandate had expired, so he was simply performing the function of board member until new members were elected. In some cases, the process of election on new board members required several months or even several years.

Slobodan Leković, President of the Commission for Determining Conflict of Interest announced on February 3 that he was not going to do anything as regards the initiative of MANS, since the Commission had no conditions for work, since the funds from the budget of the National Parliament had not yet been secured:

«We will not do anything at the moment, because there is no one to work. We cannot do it on our knees.»⁵

⁴ ICN Galenika, the Clinical-hospital centre and "Tennis club AS"

⁵ Slobodan Leković, President of the Commission for Determining Conflict of Interest, «Vijesti», 03 February 2006

On February 4th 2005 MANS asked from the President of the National Parliament, Ranko Krivokapić to provide conditions for law implementation and ask to relieve from duty President of the Commission for Determining Conflict of Interest if he performs his duty unconscientiously.

Three months after the initiative was submitted, on 28 April 2005 the Commission made decisions by which it states there is no conflict of interest or other law violation by Miomir Mugoša.

"It has been determined that dr Miomir Mugoša is the President of the Municipal Assembly Podgorica, MP in the Parliament of the Republic of Montenegro and a member of the management board of "Hemomont d.o.o." and that he is not a member of other bodies quoted in the Initiative for starting the proceedings, thus there is no other violation of the Law."

Decision of the Commission regarding the Miomir Mugoša case
28 April 2005, number 218/14⁶

On the same day, the Commission also determined in relation to its own chairperson Slobodan Leković that there was no conflict of interest or violation of the law based on MANS appeal.

«The Commission has determined there is no conflict of interest or other violation of the Law on Conflict of Interest by Slobodan Leković if he participates, as the Commission President, in the decision making on the existence of conflict of interest of other public officials, thus also on the conflict of interest for dr Miomir Mugoša.

Namely, in terms of the Law on Conflict of Interest, conflict of interest exists when a public official puts his private interest before the public interest, in order to obtain material gain for himself or persons related to him, and the Law is violated, if he acts contrary to the prescribed duties, limitations and bans.

The Law on Conflict of Interest does not foresee existence of conflict of interest, nor a possibility of existence of that conflict or other violation of the Law due to the fact that the President or a member of the Commission belongs to the same party or is a member of the Parliament of which the official on whose conflict on interest it is being decided is a member or president.«

Decision of the Commission regarding the Slobodan Leković case
28 April 2005, number 209/3⁷

Since the only legal procedure for appealing decision of the Commission, even in relation to one of its own members is to resubmit an appeal to the Commission itself, thus putting it in the unenviable position of being its own supervisor. On May 9th 2005 MANS submitted requests for reconsidering decisions of the Commission to the Commission itself, on the initiatives for starting proceeding for determining conflict of interest for Miomir Mugoša and Slobodan Leković, but the Commission confirmed the first instance decisions.

⁶ http://www.konfliktinteresa.cg.yu/rjesenja/odluka_mugosa.htm

⁷ http://www.konfliktinteresa.cg.yu/rjesenja/odluka_s_lekovic.htm

2.4. Case study 2: Administrative and Supreme Court decisions on the right to appeal decisions of the Commission

In a test case submitted by MANS to the Administrative Court, the Court rejected the appeal for termination of the decisions of the Commission. The Administrative Court in its decision stated that MANS did not have the right to file charges, since the decision of the Commission did not violate MANS's rights or interests based on the Law. The Court ruled that the right to bring charges exists only for public officials whom the Commission's decisions refer to.

Decision of the Administrative Court made on April 3rd 2007

Po nalaženju Suda, u konkretnom slučaju, ovim su iscrpljena pravna sredstva koja tužilac može da koristi u postupku pokrenutom po njegovoj inicijativi, budući da osporenim odlukom nije povrijeđeno bilo koje pravo ili na zakonu zasnovani interes tužioca.

Sud također smatra da bi se o povredi nekog prava ili na zakonu zasnovanog interesa, pa time i prava na pokretanje upravnog spora, moglo govoriti, kada bi tužilac bilo neko lice iz člana 2. Zakona o konfliktu interesa, za koga je Komisija utvrdila da je u konfliktu interesa.

Iz navedenih razloga, a na osnovu člana 22. stav 1. tačka 3. Zakona o upravnom sporu, riješeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 03.04.2007. godine

Zapisničar,
Marina Nedović, s.r.

PREDSJEDNIK VIJEĆA,
Ljubinka Popović-Kustudić, s.r.



According to the findings of the Court, in the concrete case, this makes all legal instruments used that a Prosecutor may use in the procedure initiated at his/her initiative, since the decision cancelled no right was violated neither any interest of the Prosecutor based on the law.

The Court also believes that violation of the right or interest based on law and thus the right to initiate the administrative procedure would exist if the prosecutor would be any person from Article 2 of the Law on Conflict of Interests whom the Commission for Establishment of Conflict of Interests has found to be making conflict of interests.

Following this judgment, MANS submitted a request for an extraordinary reexamination of the Administrative Court's decision to the Supreme Court. The Supreme Court terminated the decision of the Administrative Court and took a standpoint that MANS, as an entity that submitted an initiative to the Commission, had the right to bring charges to the Administrative Court in case they were not satisfied with decisions of that institution.

Decision of the Supreme Court made on September 14th 2007

Pravna, tj. ona više nije stranka u smislu čl.3. st.1. Zakona o upravnom sporu.

Dobijeno nesporno svojstvo stranke u upravnom postupku po pravilu se ne može izgubiti u upravnom sporu, jer ako je određeno lice imalo na zakonu zasnovani pravni interes za vođenje upravnog postupka, nejasno je kako gubi taj interes koristeći dozvoljena pravna sredstva protiv akta kojim je negativno riješen njen zahtjev.

Kod napred navedenog stanja stvari pobijano rješenje je bilo nužno ukinuti da bi u ponovnom postupku bila otklonjena ukazana povreda postupka.

Sa izloženog, a na osnovu čl.46. st.3. Zakona o upravnom sporu odlučeno je kao u izreci.

VRHOVNI SUD REPUBLIKE CRNE GORE
Podgorica, 14.09.2007. godine

Zapisničar,
Mirjana Orović, s.r.



„It is not understandable and it is not clear and it is contrary to the facts mentioned in the case files referring to conclusion of the contested decision that after the adoption of the final administrative act in the procedure initiated at request of the party, the same party lost right to initiate litigation ...

The obtained undisputable power of a party in administrative procedure as a rule cannot be lost in administrative procedure, because if a certain party had a legal interest based on the law to lead administrative procedure, it is not clear how the party can lose that interest using the allowed legal instruments against the act that resolves the party's request negatively.

In the case of the above mentioned state of affairs, the contested decision should have been terminated in order to eliminate in the renewed procedure the proved violation of the procedure “.